Procter & Gamble – I.P. Division

FACSIMILE TRANSMITTAL SHEET AND

CERTIFICATE OF TRANSMISSION UNDER 37 CFR 1.8

TO: **United States Patent and Trademark Office**
Mail Stop Appeal Brief - Patents
Examiner: Jacqueline F. Stephens

Fax No. 571-273-8300 Phone No. 571-272-4937

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1) Appeal Brief & Appendices (18 pages)
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5)

Inventor(s): Donald Carroll Roe, et al.
S.N.: 10/811,696
Filed: March 29, 2004
Docket # 9533
Confirmation No.: 1358

Number of Pages Including this Page: 21

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	:	10/811,696
Inventor(s)	:	Donald Carroll Roe, et al.
Filed	:	March 29, 2004
Art Unit	:	3761
Examiner	:	Jacqueline F. Stephens
Docket No.	:	9533
Confirmation No.	:	1358
Customer No.	:	27752
Title	:	Disposable Absorbent Articles Being Adaptable To Wearer's Anatomy

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

With regard to the above-identified application, an Office Action was mailed on January 11, 2007 and a timely Notice of Appeal was filed on May 14, 2007. This Appeal Brief is filed pursuant to that Notice, with a two month extension per the attached petition and the required fee.

REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

RELATED APPEALS AND INTERFERENCES

There are no known related appeals, interferences, or judicial proceedings.

Appl. No. 10/811,696
Docket No. 9533
Appeal Brief dated September 14, 2007
Reply to Office Action mailed on January 11, 2007
Customer No. 27752

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STATUS OF CLAIMS

The application includes claims 1-21. Claims 2, 4, and 21 have been cancelled. Claims 1, 3, and 5-20 are pending. Claims 1, 3, and 5-20 stand rejected. Claims 1, 3, and 5-20 are appealed. A complete copy of the appealed claims is set forth in the Claims Appendix.

STATUS OF AMENDMENTS

The Applicant has not filed an amendment subsequent to the Office Action of January 11, 2007 (hereinafter the "last office action").

SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 1 claims a unitary disposable absorbent article (#20 in Fig. 1, #120 in Figs. 2, 11, 12, #220 in Fig. 3, #320 in Fig. 4, #420 in Fig. 5, #520 in Fig. 6, #620 in Figs. 7, 9, #720 in Fig. 8, page 4, lines 24-27, page 5, lines 5-7). The article includes an absorbent core (#28 in Fig. 1, page 8, line 8 – page 9, line 3), a liquid permeable topsheet (#24 in Fig. 1, page 7, line 33 – page 8, line 7), a liquid impermeable backsheet (#26 in Fig. 1, #126 in Figs. 2, 11, #226 in Fig. 3, #326 in Fig. 4, #426 in Fig. 5, #526 in Fig. 6, #626 in Figs. 7, page 9, line 4 – page 10, line 4), and at least one elastomeric element (#190 in Figs. 2, 11, 12, #290 in Fig. 3, #390 in Fig. 4, #490 in Fig. 5, #590 in Fig. 6, #690 in Figs. 7, 9, #790 in Fig. 8, page 14, line 5 – page 15, line 13). The absorbent core has a garment-facing surface and a body-facing surface. The liquid permeable topsheet is positioned adjacent to the body-facing surface of the absorbent core. The liquid impermeable backsheet is positioned adjacent the garment-facing surface of the absorbent core.

The backsheet has a physical variation (page 3, lines 2-14) along a longitudinal

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axis (#1000 in Figs. 1-9, page 7, line 2) of the article. The physical variation defines a first backsheet zone (#160 in Fig. 2, 11, #260 in Fig. 3, #360 in Fig. 4, #460 in Fig. 5, #560 in Fig. 6, #660 in Fig. 7) and a second backsheet zone (#170 in Fig. 2, 11, #270 in Fig. 3, #370 in Fig. 4, #470 in Fig. 5, #570 in Fig. 6, #670 in Figs. 7, 9, 10a, #770 in Figs. 8, 10b). The physical variation is measured by a physical property selected from the group consisting of at least one of basis weight, thickness and density.

The at least one elastomeric element has at least one primary direction of stretch. The elastomeric element at least partially overlaps and is joined to the second backsheet zone. (Page 18, lines 1-2.) A relaxed pathlength of the elastomeric element in the primary direction of stretch is less than a total pathlength of the backsheet in the region of overlap. (Page 14, lines 9-24.)

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

I. Whether claims 1, 3, 5-8, and 11-20 are unpatentable under 35 USC § 102(b) over Dobrin, et al. (US 5,571,096).

II. Whether claims 9 and 10 are unpatentable under 35 USC § 103(a) over Dobrin, et al. (US 5,571,096).

ARGUMENTS

Rejections of Claims 1, 3, 5-8, and 11-20 under 35 USC § 102(b) over Dobrin

The rejections of claims 1, 3, 5-8, and 11-20 under 35 USC § 102(b) over Dobrin are improper, because the last Office Action failed to establish anticipation, since the Dobrin reference does not describe each and every claim limitation recited in the Applicant's independent claim 1.

"'A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.' *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)." MPEP § 2131. The Applicant submits that the Dobrin reference does not describe each and every claim limitation recited in the Applicant's independent claim 1.

The Applicant's independent claim 1 recites in part "a unitary disposable absorbent article" including "a liquid impermeable backsheet...having a physical variation along a longitudinal axis of the article, wherein said physical variation defines a first backsheet zone and a second backsheet zone, wherein said physical variation is as measured by a physical property selected from the group consisting of at least one of basis weight, thickness and density."

In the embodiment of Figure 1 of the application, "The diaper 20 includes a longitudinal axis 1000 and a lateral axis 1100." (Page 7, line 2.) For reference, Figure 1 of the application is shown below.

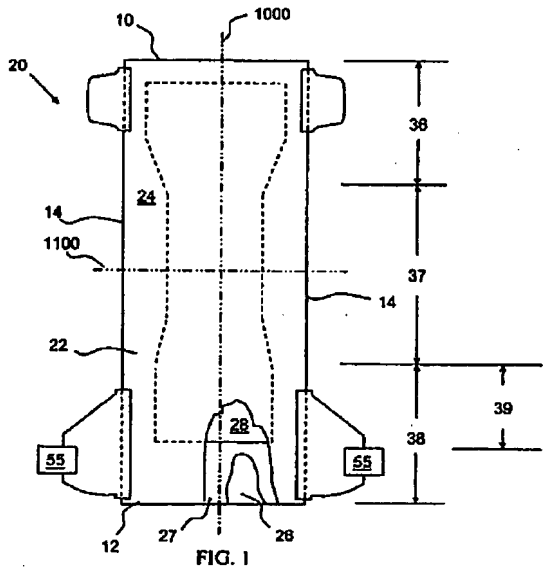


FIG. 1

Figure 1 illustrates the longitudinal axis 1000 as lying in the plane of the article and running along the maximum linear dimension of the article. The Applicant notes that the longitudinal axis is illustrated in the same manner in Figures 2-9 of the application.

The last Office Action cited the embodiments of Figures 2 and 3 of the Dobrin reference against the Applicant's independent claim 1. For reference, Figures 2 and 3 of the Dobrin reference are shown below.

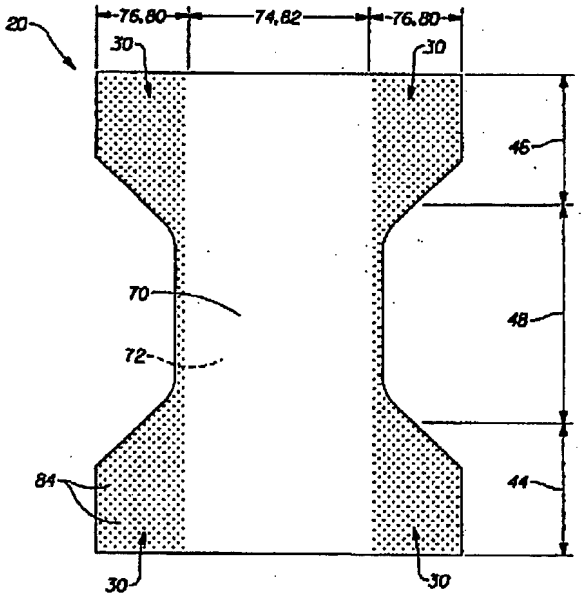


Fig. 2

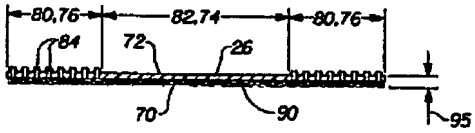


Fig. 3

The Dobrin reference describes a diaper 20 and states that "The backsheet 26 of the present invention, as shown in FIG. 2, preferably has a body-facing surface 72, a garment-facing surface 70, a central region 74 and at least one outer region 76. Further, the backsheet 26 preferably comprises at least two distinct zones, at least one apertured zone 80 and at least one non-apertured zone 82." (Col. 7, lines 35-40.) The Dobrin reference also states that "FIG. 3 is an enlarged, cross-sectional view of the backsheet of

FIG. 2." (Col 2, lines 54-55.)

The Dobrin reference also describes lateral and longitudinal directions for the diaper, 20, stating:

> The diaper 20 also has two centerlines, a longitudinal centerline 100 and a transverse centerline 110. The term "longitudinal", as used herein, refers to a line, axis, or direction in the plane of the diaper 20 that is generally aligned with (e.g. approximately parallel with) a vertical plane which bisects a standing wearer into left and right halves when the diaper 20 is worn. The terms "transverse" and "lateral", as used herein, are interchangeable and refer to a line, axis or direction which lies within the plane of the diaper that is generally perpendicular to the longitudinal direction (which divides the wearer into front and back body halves).

(Col. 3, line 63 – col. 4, line 7.) In other words, a longitudinal axis of the Dobrin reference lies in the plane of the diaper and runs along the maximum linear dimension of the article. For reference, Figure 1 of the Dobrin reference is shown below.

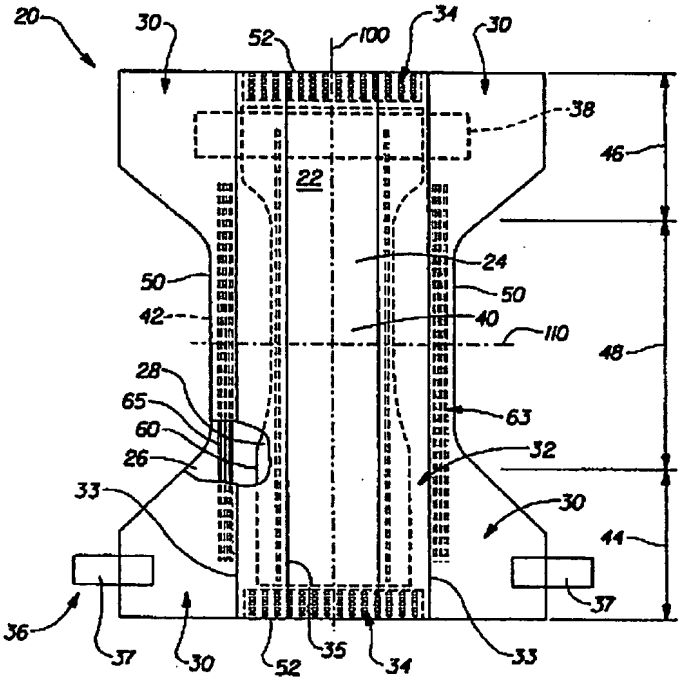


Fig. 1

In citing the Dobrin reference against the Applicant's independent claim 1, the last Office Action stated:

> The backsheet of Dobrin has a physical variation along at least one axis, wherein a physical variation defines a first backsheet zone and a second backsheet zone (Figures 2 and 3). The physical variation is measured by the physical properties of thickness, weight, and density as Dobrin discloses microapertured regions and unaperatured regions of the backsheet. The apertured regions have a lower weight, thickness, and density as compared to unaperatured regions. Figure 2 shows a physical variation in the lateral axis between zones 76 and 64. However, there is some physical variation in the longitudinal axis as well, which is demonstrated in Figure 3 between the apertured and unaperatured regions of zone 76.

(Page 3, ¶ 2.) The last Office Action also stated:

> ...the examiner maintains a physical variation exists in the longitudinal direction. Figure 3, as the applicant points out appears to be a lateral cross-sectional view of the article. The examiner's reference to Figure 3 was with respect to the apertured regions of zone 76. Figure 2 shows apertures in the backsheet of the zone 76 as well. The physical variation exists between the apertured and unaperatured regions. These regions are present in a lateral and longitudinal direction in zone 76 as shown in Figure 2. The difference in the apertured and unaperatured areas would results in at least a difference in density due to the presence of the apertures and presumably a difference in weight as well. Therefore, the rejection is maintained.

(Page 2, ¶ 1.)

Based on the above, it appears that the last Office Action takes the following position: the differences between the apertured and unaperatured zones in the backsheet of the Dobrin reference are physical variations in basis weight, thickness, and density, and since the zones are present in the lateral and longitudinal directions, there is a physical variation along a longitudinal axis of the Dobrin article, which reads on the Applicant's independent claim 1. The Applicant respectfully disagrees with this position.

The Applicant does not admit that the differences between the apertured and

unaperatured zones in the backsheet of the Dobrin reference are "physical variations in basis weight, thickness, and density," as recited in part in independent claim 1. However, the Applicant discusses that position herein for the sake of argument.

The position that apertured and unaperatured zones are "present in a lateral and longitudinal direction" is inapposite with respect to the Applicant's independent claim 1. By definition, an area is bi-directional in its physical presence, i.e. it has a length and a width in a plane. While the last Office Action refers to a physical presence of each zone in the longitudinal direction, the Applicant's independent claim 1 claims a "physical variation along a longitudinal axis."

If the differences between the apertured and unaperatured zones in the backsheet of the Dobrin reference are such "physical variations," then the physical variation occurs in the transition between the apertured and unaperatured zones. In the embodiment of Figure 2 of the Dobrin reference, transitions between the apertured zones 80 and the unaperatured zone 82 appear to occur only in the lateral direction, not in the longitudinal direction. In other words, along a longitudinal axis of the article of Figure 2 of the Dobrin reference, there are no transitions between apertured and unaperatured zones. As a result, in Figure 2 of the Dobrin reference, there is no "physical variation along a longitudinal axis of the article," as recited in part in the Applicant's independent claim 1.

Figure 3 of the Dobrin reference is "an enlarged, cross-sectional view of the backsheet" of Figure 2. (Col 2, lines 54-55.) As a result, when viewing Figure 3, the longitudinal axis of the article would be perpendicular to the page. If the longitudinal axis was illustrated in Figure 3, then it would be a single point. The length of the longitudinal axis cannot be illustrated in the view of Figure 3 of the Dobrin reference. As

a result, Figure 3 of the Dobrin reference cannot illustrate a "physical variation along a longitudinal axis of the article," as recited in part in the Applicant's independent claim 1.

The Dobrin reference describes embodiments in which "The apertured zone(s) 80 preferably comprise at least a portion of the outer region 76 of the backsheet 26 and preferably extend laterally outwardly from the central region 74 of the backsheet 26 beyond at least one of the longitudinal edges 60 of the absorbent core 28 in at least the rear waist region 44." (Col. 8, lines 42-47.) However, from the Applicant's review, the Dobrin reference does not appear to describe embodiments in which an apertured zone is disposed longitudinally inboard to or outboard from an unaperatured zone.

The Applicant submits that, the Dobrin reference does not disclose "a liquid impermeable backsheet...having a physical variation along a longitudinal axis of the article, wherein said physical variation defines a first backsheet zone and a second backsheet zone" as recited in part in the Applicant's independent claim 1. Thus, the Dobrin reference does not describe each and every claim limitation recited in the Applicant's independent claim 1. For this reason, the last Office Action failed to establish anticipation of the Applicant's independent claim 1. As a result, the Applicant respectfully requests that the Board reverse these 102(b) rejections for independent claim 1 and for dependent claims 3, 5-8, and 11-20, which depend therefrom, and allow these claims.

Rejections of Claims 9 and 10 under 35 USC § 103(a) over Dobrin

The rejections of claims 9 and 10 under 35 USC § 103(a) over Dobrin are improper, because the last Office Action failed to establish a *prima facie* case of

obviousness, since the Dobrin reference does not describe, teach, or suggest each and every claim limitation recited in the Applicant's independent claim 1.

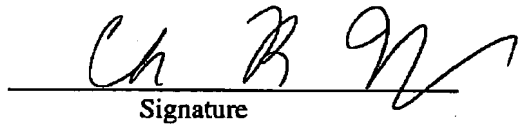
"To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974)." MPEP § 2143.03. As described above, the Applicant submits that, the Dobrin reference does not disclose "a liquid impermeable backsheet...having a physical variation along a longitudinal axis of the article, wherein said physical variation defines a first backsheet zone and a second backsheet zone" as recited in part in the Applicant's independent claim 1. Thus, the Dobrin reference does not describe, teach, or suggest each and every claim limitation recited in the Applicant's independent claim 1. As a result, independent claim 1 would not have been obvious in view of the Dobrin reference.

"If an independent claim is nonobvious under 35 USC 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)." MPEP § 2143.03. Claims 9 and 10 depend from independent claim 1. Since claim 1 is nonobvious, claims 9 and 10 are also nonobvious. For this reason, the last Office Action failed to establish a prima facie case of obviousness against the Applicant's claims 9 and 10. As a result, the Applicant respectfully requests that the Board reverse these 103(a) rejections for claims 9 and 10, and allow these claims.

SUMMARY

In view of all of the above, the Applicant respectfully submits that the appealed claims have been improperly rejected. The Applicant respectfully requests that the Honorable Board of Patent Appeals and Interferences reverse the rejections of the appealed claims and remand the application to the Examiner with instructions that these claims be allowed.

Respectfully submitted,
THE PROCTER & GAMBLE COMPANY



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Charles R. Ware
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Customer No. 27752

CLAIMS APPENDIX

1. A unitary disposable absorbent article, comprising:

an absorbent core having a garment-facing surface and a body-facing surface;

a liquid permeable topsheet positioned adjacent said body-facing surface of said absorbent core;

a liquid impermeable backsheet positioned adjacent said garment-facing surface of said absorbent core; said backsheet having a physical variation along a longitudinal axis of the article, wherein said physical variation defines a first backsheet zone and a second backsheet zone, wherein said physical variation is as measured by a physical property selected from the group consisting of at least one of basis weight, thickness and density and at least one elastomeric element having at least one primary direction of stretch, said elastomeric element at least partially overlapping and joined to said second backsheet zone, wherein a relaxed pathlength of said elastomeric element in the primary direction of stretch is less than a total pathlength of said backsheet in the region of overlap.

3. The absorbent article of claim 1 wherein said first backsheet zone and said second backsheet zone partially overlap said longitudinal axis.

5. The absorbent article of claim 1 wherein said article further comprises:

a front waist region;

a back waist region, said front and back waist regions being located at opposite

ends of said article, said front and back waist regions generally encircling a waist of a wearer when said article is worn;

a crotch region, said crotch region being located intermediate to said front and back waist regions, said crotch region extending longitudinally between said front and back waist regions, said crotch region generally positioned between a pair of legs of a wearer; and

a buttocks region, said crotch region being located intermediate to said front and back waist regions, said buttocks region being located near a proximal end of said back waist region,

wherein said first backsheet zone is disposed primarily in said crotch region and said front waist region, wherein said second backsheet zone is at least partially disposed in said back waist region.

6. The absorbent article of claim 1 wherein said article further comprises:

a front waist region;

a back waist region, said front and back waist regions being located at opposite ends of said article, said front and back waist regions generally encircling a waist of a wearer when said article is worn;

a crotch region, said crotch region being located intermediate to said front and back waist regions, said crotch region extending longitudinally between said front and back waist regions, said crotch region generally positioned between a pair of legs of a wearer; and

a buttocks region, said crotch region being located intermediate to said front and

back waist regions, said buttocks region being located near a proximal end of said back waist region, wherein said first backsheet zone is disposed primarily in said crotch region and said front waist region, wherein said second backsheet zone is at least partially disposed in said buttocks region.

7. The absorbent article of claim 6 wherein said elastomeric element is non-linear in shape.

8. The absorbent article of claim 1 wherein said physical variation is such that said second backsheet zone has a lower value than said first backsheet zone.

9. The absorbent article of claim 1 wherein said selected physical property is basis weight, wherein said physical variation is measured as a ratio such that said ratio of the basis weight of said second backsheet zone to the basis weight in said first backsheet zone is less than about 0.6.

10. The absorbent article of claim 1 wherein a ratio of the relaxed pathlength of said elastomeric element to a total pathlength of said backsheet within said second backsheet zone in a joined area is less than about 0.8.

11. The absorbent article of claim 1 further comprising a third backsheet zone having a value for said physical property that is different than a corresponding value for said first and second backsheet zone.

12. The absorbent article of claim 11 wherein said physical variation is such that said third backsheet zone has a higher value than said first backsheet zone and said second backsheet zone.

13. The absorbent article of claim 11 wherein said physical variation is such that said third backsheet zone has a higher value than said first backsheet zone and a lower value than said second backsheet zone.

14. The absorbent article of claim 11 wherein said third backsheet zone is at least partially disposed in said front waist region.

15. The absorbent article of claim 11 wherein said third backsheet zone is at least partially disposed in said buttocks region.

16. The absorbent article of claim 11 wherein said third backsheet zone is at least partially disposed in said back waist region.

17. The absorbent article of claim 11 further comprising a second elastomeric element at least partially overlapping and joined to said third backsheet zone, wherein a relaxed pathlength of said elastomeric element in the primary direction of stretch is less than a total pathlength of said backsheet in the region of overlap.

18. The absorbent article of claim 17 wherein said second elastomeric element is non-linear.

19. The absorbent article of claim 1 wherein said article may be selected from the group consisting of a disposable diaper, a catamenial and an adult incontinence product.

20. The absorbent article of claim 1 wherein said disposable diaper is a pant.

EVIDENCE APPENDIX

(none)

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RELATED PROCEEDINGS APPENDIX

(none)